IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 629 of 2003

in

SPECIAL CIVIL APPLICATIONNo 3645 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEW ERA HIGH SCHOOL VALI MANDAL
Versus
UNION OF INDIA THRO' SECRETARY

Appearance:
1. LETTERS PATENT APPEAL No. 629 of 2003

MR.MIHIR JOSHI, ADVOCATE FOR MS AMRITA
M. THAKORE for Appellant
MR KAMAL TRIVEDI, ADDL. ADVOCATE GENERAL FOR
MR.S.N. THAKKAR, Standing Counsel for

Union of India - Respondent No. 1
MS. HARSHA DEVANI, AGP, for Respondent No. 2
MRS V.D. NANAVATI for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 15/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI FOR THE COURT)

1. This appeal is directed against the order dated 25th June 2003 made by the learned Single Judge vacating the ad-interim relief granted on 28-4-2003 in terms of para 5(B) against the implementation of the order at Annexure "J" impugned in the petition preferred by the appellants. The respondent No.1 in the impugned order contained in the Office Memorandum dated 11-2-2003, at Annexure "J" to the petition, had stated that admission to all the seats of the Institutions mentioned therein which were conferred the status of "deemed university" including the respondent No.3 Sardar Vallabhbhai National Institute of Technology, Surat city (hereinafter referred to as the said "Institute") shall be made on the basis of All India Engineering Entrance Examination (AIEEE). In the interim relief, the petitioner also prayed for continuing the prevailing system of admissions in so far as the filling up of 225 seats in the said Institute and 129 seats allotted to Gujarat State for admission to Engineering Colleges of other States was concerned.

2. According to the appellants (original petitioners), the admission policy which was applicable prior to the introduction of the AIEEE for admission to degree level course in engineering in Central Universities, Deemed Universities, National Institutes of Technology etc. was more advantageous to the students who had passed Standard 12th Examination held by the Gujarat Secondary Education Board inasmuch as, there was a ratio between the students of the Gujarat Secondary Education Board and the Central Board which was to be observed and there was a weightage of marks being assigned, for admission to engineering courses to students who had passed Standard Xth examination, with

two technical subjects. As stated in paragraph 6 of the petition, the respondent Institute was declared as a Deemed University under Section 3 of the University Grants Commission Act, 1956, by notification dated 4-10-2002, which fact was conveyed by letter dated 10-10-2002 by the respondent No.1 to the respondent No.3. The admission notice came to be issued by the Central Board of Secondary Education (CBSE), New Delhi in The Times of India of 20-12-2002, Mumbai Edition, stating that, as per the directives of the respondent No.1, it would be conducting the All India Engineering Entrance Examination for admission to degree level course in engineering for Central Universities, Deemed Universities, National Institutes of Technology etc., and that the date of examination was 11-5-2003. It was mentioned that the Information Bulletin containing the application form was available for sale from 23-12-2002 to 1-2-2003. According to the petitioners, many students had missed the first notice, but having come to know of the fact of such notice having been issued, in or about the second week of January 2003, they applied and obtained a copy of the Information Bulletin referred to in the notice, a copy of which Bulletin is at Annexure "F" to the petition. It is stated that two salient features of the examination on an analysis of the syllabus contained in Appendix 3 of the said Bulletin indicated that the course was based on that of the Central Board and that the language of the question papers was either English or Hindi. According to the petitioners, the students were not informed of the change in the system of admission at all and it appears that even the respondent No.3 was not aware of the same, at least till the publication of the said notices. It was contended that, by the new policy, the students in Gujarat were put to a huge disadvantage and their rights to pursue education in a vocation / profession of their choice were materially affected. It was also contended that the impugned order was contrary to the conditions attached to the declaration of the respondent No.3 as deemed university and was therefore illegal. Moreover, there was no consultation with the affected parties prior to taking such a decision and the decision was illegal on the ground that it had been made in breach of the principles of natural justice and legitimate expectation. It was also contended that the impugned decision was unreasonable, because, it was made applicable with immediate effect from the ensuing academic year, leaving no sufficient time for the students appearing in Standard 12th Examination of the Gujarat Board to prepare themselves for the AIEEE, particularly in the context of the different syllabus and the language in which the

question papers were to be answered. It was also contended that the impugned decision was bad, because, it treated two classes of students, namely, those studying under the Gujarat Board and those under the Central Board alike, thereby treating unequals as equals.

3. In the affidavit-in-reply filed on behalf of the respondent No.1, it was pointed out that the decision to give admission through the AIEEE was a well considered decision angling at achieving the upgraded level of examination applicable to students all over the country. It was stated that the functioning of the institutions was required to be brought in line and conformity with the policy initiatives of the respondent No.1, including the requisite guidelines of the ACITE. It was decided, with a view to improve the academic standards, to declare the Regional Engineering Colleges as Deemed Universities in exercise of powers conferred on the Central Government under Section 3 of the UGC Act and the respondent NO.3 was declared as a Deemed University by a notification issued on 4-10-2002 under Section 3 of the said Act. It was pointed out that the guidelines issued by the UGC in respect of the institutions declared to be "Deemed University" under Section 3 of the said Act incorporated in clause (13) a guideline as per which the admissions were to be made on All India basis to the Engineering Courses in all the Deemed Universities through a common entrance test conducted either by the UGC or by an Institution / Agency identified and approved by the UGC. This was also to apply to those institutions which had already been given the status of "Deemed University". It was submitted that, while producing the copy of the letter dated 10-10-2002, at Annexure "C" to the petition, the petitioners had not appended its Annexure which was a copy of the record of the decision taken in the meeting of the Directors of National Institutes of Technology, held on 27-7-2002 in which, under clause (11), it was explicitly stated that next year onwards, the students shall be admitted through AIEEE to be conducted by CBSE. It was also pointed out in paragraph 10 of the reply that the CBSE had published a notice of admission in national dailies on various dates between 19/20-12-2002 and 11-2-2003 for the conduct of the AIEEE-2003. It was submitted that the students were aware of the said examination and 5,000 students in the State of Gujarat had registered for it. The respondent No.1 relied upon a decision of the Division Bench of the Bombay High Court in paragraph 15 of the affidavit-in reply, in which, it was held that, the change from selection on the basis of 12th Standard examination marks by selection by AIEEE was made on 26-1-2003, and there was a sufficient notice of

the change in the policy and the Court did not consider it necessary to interfere in the policy decision taken in the matter.

4. The learned Single Judge, by a very elaborate order, held that the petitioners had started making representations from January 2003, and that not appearing at the examination on 11-5-2003 was a lapse on their part, of which they could not claim any advantage. As regards the contention on the basis of doctrine of legitimate expectation, the learned Single Judge held that it was not attracted in the present case. The challenge on the ground of discrimination and violation of Article 14 of the Constitution was negatived since not a single Institute on which the status of "deemed university" was conferred, was excluded from AIEEE 2003. It was held that sufficient notice of change in policy was given with a wide publicity was given to it. The learned Single Judge also referred to E-Communication presumably in context of the information posted on the website of the CBSE for admission to the deemed universities through the AIEEE-2003.

5. The learned counsel appearing for the appellants submitted that the direction to hold the AIEEE for the academic year 2003-2004 given for admission to the respondent No.3 Institute was without the authority of law, because, it was not issued by the University Grants Commission, which had issued general guidelines only. It was argued that the application of admission policy from 2003 was unreasonable, because of difference in syllabus and due to the fact that the language in the examination was English or Hindi, which left insufficient time for preparation to the students clearing Standard 12th Examination under the Gujarat Board. It was argued that the admission policy could not be made effective because of lack of proper publicity. It was also contended that the policy was irrational in the context of reservation of 225 seats for the students from Gujarat, who need not have been subjected to the AIEEE for admission. It was then contended that the challenge of policy affected the students adversely, because, they were now denied the benefit of grace marks on technical subjects, which they would have otherwise got for admission to the college and also because the ratio recognized for admission for the candidates passing under the State Board and the Central Board would no more now be recognized. He submitted that the condition No.1 in the letter dated 10-10-2002 (Annexure "C" to the petition), contemplated that there shall be no change in the system of admission as a result of conversion of the college into "deemed university" and

therefore, holding of AIEEE for admissions to the said Institute was unwarrented and illegal.

5.1 In support of his contentions, the learned counsel for the appellants relied upon the following decisions :

[a] The decision of the Supreme Court in State of Madhya Pradesh v. Ram Ragubir Prasad Agarwal, reported in AIR 1979 SC 888 was cited to point out that it was held therein that "publication" to the educational world is the connotation of the expression. Even the student and the teaching community may have to know what the relevant syllabus for a subject is, which means wider publicity than minimal communication to the Departmental officialdom.

[b] The decision of the Supreme Court in Col. A.S.Sangwan v. Union of India, reported in AIR 1981 SC 1545 was cited for the proposition that if a change in policy is made by the government, it must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrarily. Whatever policy is made subsequently should be done fairly and made known to those concerned.

[c] The decision of this Court in XX GLR 614 was cited to gain support from the observations made in paragraph 20 by the learned Single Judge to the effect that the State Government would be well advised to consider all the relevant questions relating to its policy in the matter of admission to government colleges well in advance of the start of the academic year and to formulate rules based on such policy and make such rules known to the intending applicants by giving it suitable publicity.

6. The learned Additional Advocate General appearing for the respondent No.1 Union of India, taking us through the entire record, submitted that adequate notice of the change in the system of admission was given in the present case. He pointed out that the notification dated 4-10-2002 issued under Section 3 was a gazetted notification and once the respondent No.3 was declared as a deemed university, the admission policy which was uniformly applicable to all the deemed universities, namely, through AIEEE, which was declared under the

resolution dated 18-10-2001, became automatically applicable to the respondent NO.3. It was submitted that sufficient notice was given by way of press-notes, notices in national dailies, issuance of the information on the internet website of the CBSE, and, as many as 5,000 students had registered at the examination on the basis of such information widely published. It was submitted that there was no question of any legitimate expectation arising in the present case, because, there was no breach of any promise or representation. It was contended that the policy of holding All India Entrance Examination was framed with a view to attain high standards of education in the technical field. It was also submitted that the decision to hold the examination taken under the resolution of 18-10-2003 was already implemented in the year 2002-2003 and the question of the mode of admissions to a "deemed university" was settled as per that policy which continued to operate even in respect of the deemed universities that were subsequently recognized, including the respondent No.3. According to him, there was no question of any fresh policy for the respondent No.3 being announced, because, on its conversion as a deemed university, it became subject to the existing policy which required admissions to be made through AIEEE. He further argued that the reliance on clause 1 of letter dated 10-10-2002 was erroneous, because, it was never intended thereby to continue the old system of admission, but it had reference only to the existing system of quota reserved for the State which was continued despite the new policy. It was submitted that there was no exemption given to any of the deemed universities from the applicability of the admission policy reflected in the resolution of 18-10-2001, in clause (13) of the guidelines issued by the UGC, in the admission notice of the institute itself, and in the Information Bulletin, which was published by the CBSE, which was to conduct the examination.

6.1 In support of his contentions, the learned Additional Advocate General, relied on the following decisions :

[a] The decision of the Supreme Court in Thapar Institute of Engineering & Technology v. Gagandeep Sharma, reported in (2001)9 SCC 157 was cited for the proposition that, prescribing the academic standards falls exclusively within the domain of special bodies like the Senate, Board of Governors and Syndicate etc., and that the Court would normally not interfere with such

prescribed standards and especially when they are intended to improve the academic standards in the institutes. The scope of judicial review in such matters would be very limited.

[b] The decision of the Supreme Court in Council For Indian School Certificate Examination v. Isha Mittal, reported in (2000)7 SCC 521 was referred to for the proposition that it is the obligation of the High Court to decide the matters before it in accordance with law, and if the law was in favour of a party before it, it was obliged to make an order in favour of such party and that, considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law.

[c] The decision of this Court in Kumari Jayshree Chandrachud Dixit v. State of Gujarat, reported in XX GLR 614 was cited for the proposition that, mathematical nicety or perfect equality are not required to meet the test of Article 14. It was held therein that, where a challenge based on Article 14 against the rules is brought before the Court, the legitimate presumption is that the rules must have been framed by the State Government in good faith and that the amendment, if any, must be made to solve the difficulties manifested by experience.

[d] The decision of the Madras High Court in Dr.R.Sivaraman v. The Registrar, Dr.M.G.R. Medical University, reported in AIR 1999 MADRAS 82 was cited to point out that it was held therein that, once Chennai Medical College, Chennai was declared to be a "Deemed to be University" by the notification under Section 3 of the UGC Act, it no more remained affiliated College of the Tamil Nadu Dr. M.G.R. Medical University.

7. The learned Advocate General appearing for the respondent No.3 Institute argued that the Institute was fully financed by the Central Government and the directions of the Central Government were binding on the Institute. It was submitted that minimum level of competence required that the admission policy reflected in the government orders and the guidelines requiring admission to be made through AIEEE should be followed and accordingly, the Institute, in its admission notice, was based on said policy. He pointed out that press-note was

issued by the Institute on 22-10-2002 clearly mentioning that the admissions for the academic year 2003-2004 to the Institute will be governed through All India Entrance Examination. The contents of the press-note were reflected in the news item of 24-10-2002 in Gujarat Samachar. He adopted contentions which were raised on behalf of the Central Government.

7.1 The learned Assistant Government Pleader appearing for the respondent State adopted the contentions canvassed on behalf of the other respondents.

8. The Parliament has exclusive power to make laws under Entry 66 of the Union List with respect to "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions". By virtue of Article 73(1)(a) of the Constitution, the executive power of the Union extends to the matters with respect to which Parliament has power to make laws. The norms of admission can have a direct impact on the standards of education and admissions must be made on a basis which is consistent with the standards laid down by a statute or regulations framed by the Central Government in exercise of its powers under Entry 66 of the List 1 (See Dr.Preeti Srivastava v. State of M.P., reported in (1999)7 SCC 120.

9. The All India Council for Technical Education (AICTE) was set up in 1945 by a government resolution as a National Expert Body to advise the Central and State Governments for ensuring the co-ordinated development of technical education in accordance with the approved standards. The National Policy on Education, 1986 also stipulated that the AICTE will be vested with statutory authority for planning, formulation and maintenance of norms and standards, accredition etc. All India Council for Technical education Act, 1987 provided statutory powers to the AICTE to ensure proper planning and co-ordinated development of the technical education system throughout the country, promotion of qualitative improvement of technical education in relation of planned quantitative growth and regulation of the system and proper maintenance of norms and standards. Section 10 of the All India Council for Technical Education Act, 1987 prescribes the functions of the AICTE, and, clause (o) of Section 10, which is relevant, reads as under :-

"Section 10 : Functions of the Council :

It shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the council may -

xxx

xxx

(o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;

xxx

xxx "

10. The programme of action under the National Policy on Education, 1986 envisaged the conduct of common entrance test on all India basis for admissions to professional and technical programmes in the country. It appears from the resolution dated 18th October 2001 bearing No. F.31-4/2000/TSI of the Government of India, Department of Secondary and Higher Education, Ministry of Human Resources Development that the AICTE had provided guidelines under Section 10(o) of the AICTE Act, 1987 for admissions of students to technical institutions and universities imparting technical education and as per the guidelines for the deemed universities, admissions to the identical courses in all deemed universities were required to be made on all India basis through a Common Entrance Test. This is clear from paragraph 1 of the said gazetted resolution dated 18-10-2001, which reads as under :

"Subject: Policy Framework for Admissions to Engineering, Architecture and Pharmacy Programmes at the Undergraduate Level in the Country -

1. Programme of Action (PoA) 1992 under the National Policy on Education (NPE) 1986 envisaged conduct of a Common Entrance Examination on an All India basis for admissions to professional and technical programmes in the country. Presently, a number of tests are conducted for entrance to such programmes. Multiplicity of such tests causes immense mental and financial

burden on students and their parents without adding any value to the system. Under Section 10(o) of the AICTE Act, 1987, All India Council for Technical Education (AICTE) can provide guidelines for admission of students to technical institutions and universities imparting technical education. As per Guidelines for Deemed Universities under Section 3 of the UGC Act, 1956, admissions to the identical courses in all deemed universities are required to be made on an All-India basis through a common entrance test. In view of this, there have been attempts to hold an All India Engineering Entrance Examination for past some time." (emphasis added).

10.1 The Government of India, accordingly, by the said resolution, declared in paragraph 2; "Taking into consideration the above facts, it has been decided to organise an All India Engineering Entrance Examination (AIEEE) from the year 2002". Again in paragraph 9 of the resolution, the Government of India declared: "For the first time, AIEEE shall be conducted in the month of May 2002. All concerned are required to take necessary steps to ensure that admissions to Engineering, Architecture and Pharmacy Programmes at the under graduate level is done as per the procedure given above from the year 2002". (emphasis added).

10.2 The above resolution was ordered to be published in the gazette of India for general information and communicated to the Press Information Bureau for giving wide publicity as ordered below it and copies were sent to the State Governments and Union Territories, and to the University Grants Commission, AICTE, CBSE, Deemed Universities and others, as noted below it. The responsibility of conducting the AICEE Examination was assigned to the Central Board of Secondary Education under paragraph 4 of the resolution.

11. As per the said policy of regulating admissions to the identical courses in all deemed universities on All India basis through a common entrance test, the first All India Engineering, Pharmacy and Architecture Entrance Examination was held by the CBSE on 19-5-2002. Thus, the admission policy to the deemed universities was not only announced as far back as on 18-2-2001, it was in fact implemented by conducting the first AIEEE in May 2002 through the CBSE as contemplated by paragraphs 1, 2, 4 and 9 of the resolution. There was no assurance or representation given by the authorities to provide exemption to any deemed university from the said policy

and the resolution unequivocally declared that admissions to the identical courses in all deemed universities will be by conducting the AIEEE.

12. It is as a consequence of this admission policy that the CBSE issued Information Bulletin for AIEEE 2003 (a copy of which was produced on record by the petitioners at Annexure "F" to the petition), alongwith the application form, stating that the last date for receipt of application forms was 1-2-2003 and the date of examination was 11-5-2003. The petitioners have admitted in paragraph 7 of the petition that they applied and obtained a copy of the Information Bulletin in second week of January 2003 though they missed the admission notice which was published in The Times of India, Mumbai Edition, dated 20-12-2003, a copy of which is placed at Annexure "D" to the petition. In that notice, it was stated at item 6 that; "The Information Bulletin containing the application form and other details will be available for sale from 23-12-2002 to 1-2-2003 from ..... ".

12.1 The CBSE not only issued admission notice through national dailies, it declared in the Information Bulletin that, "Candidates can apply for AIEEE-2003 either on the prescribed application form or make application "On Line" at "www.aieee.nic.in". For "On Line" submission of forms, the following instructions were issued in the Information Bulletin :

"For submission of application online at www.aieee.nic.in :

Online submission of application with photograph and signature on Computer Printed Form generated and down loaded from the website and to be sent by registered / speed post to CBSE and payment made :

(a) online by credit card through ICICI payment gateway or

(b) Bank Draft or

(c) Syndicate Bank AIEEE Challan in any branch across the country.

Candidates submitting applications online are required,

- to retain a print copy of application form number, date, the mode of remittance of Examination fee; and

- to retain a copy of the Bank Draft / Syndicate Bank AIEEE Challan.

Information regarding receipt of application in the AIEEE Unit of the CBSE will be put on the website www.aieee.nic.in in the 1st week of April."

13. It is undisputedly established that the information about holding AIEEE 2003 was duly published not only through the national dailies, but also on the website specifically created by the CBSE for the purpose. Information through the website enabling the candidates to get the admission forms and submit them through the internet was a sufficient notice to the students willing to appear at the test. To dismiss this arrangement by arguing that all students cannot be expected to have computers for access to websites so that they can get the information, is to undermine the importance of the electronica information system that is devised for speedy dissemination of information. An admission notice on the website of the CBSE ("www.aieee.nic.in"), was the surest way of sending an accurate and speedy information to all concerned and interested in the AIEEE. For seeking information just as one does not need to own a press to read a daily, one need not own a computer for an access to website. The argument that some students who did not have computers could not have known about the information regarding admission to AIEEE, which was to be held by CBSE is, therefore, without any substance. The candidates aspiring for admission to deemed universities were expected to inquire from the available sources such as, office of the CBSE, its Regional Offices, the concerned institutions and the websites. When the information was issued by publishing the Information Bulletin, on the website of the CBSE and in the news media, it cannot be urged that the authorities did not take reasonable steps to publicize the holding of the AIEEE for admissions to the respondent Institute as per the policy declared for such admissions.

13.1 In the present case, apart from the Information Bulletin published by the CBSE, information on the website "www.aieee.nic.in", and admission notice published in national dailies on various dates (i.e. on 19/20-12-2002, 23-12-2002, 3-12-2002, 30-12-2002, 3-1-2003, 6-2-2003, 7-2-2003, 8-2-2003, 9-2-2003,

10-2-2003 and 11-2-2003 as stated in paragraph 10 of the affidavit in-reply of the respondent No.1 filed in the petition) for conduct of AIEEE 2003, a press-note was already issued on 22-10-2002 by the Director of the Institution (SVNIT), stating that, from the next academic year 2003-04, admissions will be governed through AIEEE. The Gujarat Samachar of 24-10-2002 carried the news containing the information in the press-note specifically mentioning the fact that the respondent No.3 Institute had become a "deemed university", and that admissions to it for the year 2003-04 will be through AIEEE, specifically mentioning that the information was given by the Director of the said Institution. On reading the press-note and the news item, it is obvious that the news item was based on the press-note.

13.2 In fact, the respondent institute had announced admission details for the new session stating that the college was now given the status of deemed university, and that, "Admissions to SVNIT (now being a Deemed University) will be granted on the basis of performance in the All India Engineering / Pharmacy / Architecture Entrance Examination (AIEEE-2003), conducted by the CBSE for MHR Government of India. Details regarding the examination may be referred to on "http.www.aieee.nic.in".

14. There is, therefore, absolutely no substance in the contention that there was no adequate publicity of the change in policy of admission in the respondent deemed university. The policy that admissions to the deemed universities will be through AIEEE was duly announced in the gazetted resolution of 18-10-2001, which was given wide publicity and in fact, the first examination was, as noted above, held by the CBSE in May 2002. All concerned and interested persons had, therefore, adequate notice of the policy since 18-10-2001 that admissions to the deemed universities were to be made through AIEEE which was to be conducted by the CBSE. The Information Bulletin contained "All India Engineering / Pharmacy / Architecture Entrance Examination Rules", which gave scheme of the examination, the schedule of examination, syllabus, eligibility criteria, application procedure, particulars for On Line submission of applications etc., and in fact, 5,000 candidates are said to have appeared at the AIEEE 2003 held on 11-5-2003.

15. Once the policy was adopted and declared for the deemed universities that admissions will be through AIEEE as per the guidelines issued by the All India Council for Technical Education under Section 10(o) of the AICTE Act,

1987, as mentioned in paragraph 1 of the gazetted resolution dated 18-10-2001, the UGC to whom the copy of the resolution was sent, was required to implement that policy in view of the provisions of section 20(1) of the UGC Act, 1956, which laid down that, in the discharge of its functions under that Act, the Commission shall be guided by such directions on question of policy relating to national purposes, as may be given to it by the Central Government. Accordingly, the UGC, whose duties included under clause (j) of Section 12 of the UGC Act, performance of functions, as may be deemed necessary by it, for advancing the cause of higher education in India, or as may be incidental or conducive to the discharge of its functions enumerated in Section 12 for taking any steps, inter alia, "for the determination and maintenance of standards of teaching, examination and research in universities", issued "Guidelines for considering proposals for declaring an institution as deemed to be university under Section 3 of the UGC Act, 1956", in the context of section 3 of the UGC Act, which, inter alia, provided in guideline 13 that, "Admissions shall be made on an All India basis to the identical courses in all the deemed universities through a Common Entrance Test conducted either by the UGC or by an Institution / Agency identified and approved by the UGC". In clause (15)(iii), it was provided that admission procedure and fee fixation for students shall be in accordance with the norms / rules prescribed by the UGC.

15.1 Thus, the policy of laying down the requirement of admission on the basis of AIEEE, to the deemed universities notified under Section 3 of the UGC Act, implemented by the Government of India has a constitutional and statutory backing by virtue of Entry 66 of the Union List, Article 73(1)(a) of the Constitution, Section 10(o) of the AICTE Act, 1987 and Sections 3, 12 and 20 of the UGC Act, 1956. It has a direct nexus with the maintenance of high standards in the Institutions for higher education and technical education. When the respondent institute (SVNIT, Surat), was declared as deemed university by the notification No. F.9-29/2002 dated 4-10-2002, issued under Section 3 of the UGC Act published in the Gazette of India, Part I, Section I (copy at Annexure "I" to the affidavit in-reply of the respondent No.1), the policy of admission through AIEEE which was already implemented by resolution dated 18-10-2001 became automatically applicable to it and any one knowing that it was now a deemed university would have known that admissions to it were now to be through AIEEE as per the existing uniform policy for admissions to all the deemed universities.

16. Much clamour was made on behalf of the petitioners over clause (1) of the communication dated 10-10-2002, at Annexure "C" to the petition, addressed to the Principal of the respondent Institute by the Central Government informing it about the conditions that applied due to its being declared as a "Deemed to be University". In that communication, which was internal correspondence, it was mentioned in clause (1) that, "System of admission including reservation policy / domicile requirements and eligibility criteria etc. shall not change as a result of this conversion." Clause (2) related to funding pattern and clause (3) to employees' tenure and their terms and conditions. In paragraph 2 of the letter, it was mentioned that, a copy of the record of discussions and decisions taken in the meeting of the Directors of National Institutes of Technology held on 27-7-2002 under the Chairmanship of Joint secretary (Tech.) was enclosed for the record and necessary action by the Institute. The Annexure to this letter was not placed along with it in the petition and has been produced at Annexure "III" to the affidavit-in-reply of the respondent No.1. The decisions taken on 27-7-2002 at the meeting include at item 11 the following decision :

> "Next year onwards, the students shall be admitted through all India entrance examination (CBSE examination). However, the State share of quota shall continue to be the same."

16.1 There is no dispute about the fact that the admission to all the deemed universities were to be made through AIEEE and it is shown that communications similar to the one dated 10-10-2002 addressed to the respondent deemed university (see Annexure IV colly. to the affidavit of the respondent No.1 filed in Civil Application No. 4093 of 2003 in this appeal), were addressed to all other deemed universities also. Referring to the said clause (1), it has been stated in paragraph 6 of the affidavit in-reply that, it was contained in the letters sent to all the ten National Institutes of Technology which were declared deemed universities and that it was inserted by the respondent No.1 only with a view to assure the Institutions that the quota system as was prevailing since quite some time for each State, would not be altered in any manner as a consequence of their conversion into deemed university. It is stated that the said clause (1) had nothing to do with any exemption from AIEEE, which was made applicable for admission to all the Institutions which were

conferred the status of National Institute of Technology upon their conversion. The explanation given by the respondent No.1 as regards the meaning of Clause (1) seems to be correct, because, none of the Institutions including the respondent No.1 understood it to mean that AIEEE was not to be held despite their conversion.

16.2 The letter dated 10-10-2002 was an internal correspondence addressed to the respondent Institute and did not constitute any assurance or representation to the student community by the Central Government that admission to the respondent Institute for the academic year 2003 - 2004 will not be through AIEEE. The student community was made known through the Information Bulletin, notices in the national dailies, and the internet website, by the CBSE, that admissions to deemed universities including the respondent No.3, which were enumerated in the Bulletin and were declared under Section 3 of the UGC Act by notification as deemed universities, will be through AIEEE. In face of the policy of admission, which was declared by the resolution of 18-10-2001 on the basis of the guidelines issued under Section 10(o) of the AICTE Act, 1987 by the All India Council for technical education and reflected in clause 13 of the guidelines issued by the UGC, for conferring the status of deemed university under Section 3, as also in the admission notice issued by the respondent Institute as well as the information given by the CBSE in the Information Bulletin, there was absolutely no scope for giving any assurance or a representation contrary to the declared admission policy and in conflict with the duties of the statutory authority. There was indeed no scope for placing reliance on clause (1) of the letter dated 10-10-2002 by the students community, because, it was not a holding out of any assurance or representation to them.

17. The notion of legitimate expectation is rooted in fairness and refers to an outcome or interest which is expected to be achieved or retained on the basis of an assurance or representation made by a public body. There can not be a valid assurance or representation contrary to statutory duties of public authorities and whether an expectation legitimately exists or not, would also depend upon the legality of the representation or assurance. Any representation contrary to law or public duty cannot raise an expectation that can be called legitimate. Whether an expectation exists at all itself can be an issue. An expectation will be legitimate whenever it is thought that the promise legitimately made or practice lawfully followed ought to have some effect on the future

course or freedom of the person concerned who may rely on such expectation. The courts would be obliged to ignore any representation which is contrary to statutory provisions or statutory duties of the public authority that purportedly made it. The Courts cannot be party to violations of statutory provisions and encourage acts in breach of statutory duties of public authorities by giving credence to any ultra vires assurances or representations. In the present case, there has not been any assurance given or representation made that can possibly give rise to any legitimate expectation to the persons concerned with and interested in getting admission to this deemed university, to the effect that they will be admitted without undergoing AIEEE. On the contrary, the declaration that the admissions will be only through AIEEE was loud and clear and made widely known to anyone who cared to know about it. There is, therefore, no substance in the contention that there was any abrupt change in the policy or that the change was not properly publicized. The policy was announced sufficiently in advance and its implementation, regulating admissions to the deemed universities through AIEEE was widely publicised leaving no scope for any challenge on the ground of breach of duty of procedural fairness arising from any assurance or representation. The source of entitlement to a procedural fairness claim would be simply the nature of assurance and the reliance they engendered. Only a representation as to a matter of substance would give rise to a legitimate expectation of procedural fairness before there could be backtracking from that substantive assurance. In the present case, there was no assurance or representation which could have generated any expectation of getting admission to the respondent Institute without undergoing AIEEE and therefore, the question of going back from any assurance never arose.

18. Even in cases where an assurance or promise is made, it would entail a detailed examination of its precise terms and the circumstance in which the promise was made and the nature of the statutory or other discretion. There may be cases where the public authority is only required to bear in mind its previous policy or representation, giving it the weight it thinks right, but no more, before deciding whether to change the course. In such cases, the function of the court would be confined to reviewing the decision on the anvil of reasonableness. Then there may be cases where promise or practice induces a legitimate expectation, for example, of being consulted before a particular decision is taken. In such cases, the nature of promise or practice may

justify a direction requiring the opportunity for consultation to be given, unless there is an overriding reason to resile from it in which case, the court itself would judge the adequacy of the reason advanced for the change of policy, taking into account what fairness requires. There may also be some cases where a lawful practice or procedure has induced a legitimate expectation of a specific benefit which is substantive, not simply procedural. In such cases, the court has to decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Once the legitimacy of it is established, in such cases, the Court will have the task of weighing the requirement of fairness against any overriding interest relied upon for the change of policy.

18.1 The present case is not a case like Reg. v. North and East Devon Health Authority, Ex parte Coughlan, reported in [1999] Lloyd's Rep. (Medical) 306 : (2000 All E.R. 850, in which a public authority made a specific promise of home for life and then withdrew it. (see paragraphs 50 - 59 of the judgement).

18.2 In the present case, as held above, the facts and circumstances clearly indicate that there was no promise or representation made which could have given rise to any legitimate expectation.

19. The challenge against the admission policy on the ground that it discriminated against the petitioners and other students of Gujarat by providing syllabus of Central Board and the difficulties arising due to switchover of the medium of language from Gujarati to English or Hindi, resulting in the preparation time left for the aspirants insufficient, can hardly be countenanced. The contention was that, in view of the quota earmarked for the students of this State, there was no need to make them undergo the entrance examination. The idea underlying the holding of AIEEE was rooted in the National Education Policy and its implementation on the advice of the All India council for Technical Education under Section 10(o) of the All India Council for Technical Education Act, 1987. The norms for admission have nexus with the standards of education and the Union of India has, in exercise of its constitutional and statutory functions, spelt out and implemented the policy in a uniform way. Therefore, even if a quota of seats was prescribed for the students of this State, the rationale behind requiring them to compete remained the same.

19.1 As held by the Hon'ble Supreme Court in Preeti Srivastava (supra), while considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. The Central Government can frame policy on admission criteria also, in view of Article 73(1)(a) read with Entry 66 of the Union List. When the Central Government acted on the basis of guidelines issued by the expert body, AICTE under Section 10(c) of the Act as mentioned in paragraph 1 of the resolution dated 18-10-2001, it would not be open to the Court to review the rationale of such policy. There is nothing in the present case to indicate that the policy was irrational or arbitrary or made whimsically or for any ulterior purpose. As held by the Supreme court in Union of India v. International Trade Company (Civil Appeal Nos. 4020 - 4023 of 2003, decided on 7-5-2003 - 2003 SCC On Line Cases 317), "A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness." (See para 16 of the judgement). The impugned policy has a laudable purpose of achieving the high standards in the field of technical education and fully satisfies the test of reasonableness. The challenge against the requirement of undergoing AIEEE for admission to the respondent deemed university on the ground of arbitrariness and unreasonableness, therefore, clearly fails.

19.2 Even which the legitimacy of the expectation is established, when in the case on hand is not, the Court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy. Fairness in such a situation would include fairness of outcome. A large number of students who have appeared at the AIEEE Examination including 5,000 candidates from Gujarat are awaiting the outcome of their efforts, and, the implementation of a conscious policy decision lawfully taken, cannot be thwarted in absence of any statutory compulsion against it.

20. For the foregoing reasons, all the contentions raised on behalf of the appellants - original petitioners in this appeal, fail and we do not find any valid reason to interfere with the impugned order of the learned Single Judge, the appellants having failed to make out any prima facie case for an interim relief. The appeal is, therefore, dismissed with no order as to costs.

Interim relief stands vacated.

[R.K.ABICHANDANI, J.]

[KUNDAN SINGH, J.]

parmar*